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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

KEVIN SCOTT BLESSING,

Plaintiff and Respondent,

v.

SHAYN W. SCOTT,

Defendant and Appellant.

E068953

(Super.Ct.No. INV1700219)

OPINION

APPEAL from the Superior Court of Riverside County. Dale R. Wells, Judge.

Affirmed.

Spach, Capaldi & Waggaman, Madison S. Spach, Jr., and Amanda L. Voivedich
for Defendant and Appellant.

Martorella and Associates and Daniel A. Martorella for Plaintiff and Respondent.

The trial court granted a domestic violence restraining order protecting plaintiff
and respondent Kevin Scott Blessing from defendant and appellant Shayn W. Scott.

(Fam. Code, § 6200 et seq.)¹ Scott raises three issues on appeal. First, Scott contends the trial court's findings are not supported by substantial evidence. Second, Scott asserts Blessing improperly presented new evidence in his trial court reply. Third, Scott contends the temporary restraining order (TRO) and notice of hearing were improperly served. We affirm the order.

FACTUAL AND PROCEDURAL HISTORY

A. REQUEST FOR A RESTRAINING ORDER

Blessing resided in Palm Springs. Scott resided in West Hollywood. Blessing and Scott began a romantic relationship on November 15, 2016. On November 26, Blessing and Scott were engaged to be married. On approximately November 28, Scott gave or lent money to Blessing so Blessing could pay his debts. Blessing executed a grant deed to place Scott on the title of Blessing's home. Blessing later tried to repay Scott, but Scott refused to return the unrecorded deed. Blessing ended the engagement on approximately January 25, 2017.

Scott demanded more money or assets from Blessing in order to release the unrecorded deed. Scott threatened Blessing in order to obtain the money or assets. On February 26, Scott entered Blessing's home without permission, while Blessing was not present. Scott took \$30,000 of Blessing's property and vandalized the home by "ripping the Camera/front door systems off the front of [the] house." The police were contacted concerning Scott's alleged burglary of Blessing's home. The grant deed placing Scott

¹ All subsequent statutory references will be to the Family Code unless otherwise indicated.

on the title to Blessing's home was recorded on February 28. The recording was requested by "Fidelity—Sherman Oaks."

On March 3, Scott said to Blessing, "So help me God [Blessing] if you go forward with pressing charges on me, [then I] will see to it that [you] end[] up in jail or worse." On March 9, Scott told Blessing, "[You] should have [your] fucking head blown off and [I] know[] people." As of March 14, Scott had sent Blessing "a series of [t]exts calling [Blessing] pretty much every name [Scott] could think of, and also accusing [Blessing of] killing [Blessing's] recently deceased partner who passed [two] years ago as well as ac[c]using [Blessing] of [i]nsurance fraud. [Scott texted he] was going to take [Blessing] down if [Blessing] did not drop the charges on [Scott] and that [Scott] would force [Blessing] out of [Blessing's] home stating that [Blessing is] a drug addict and [Blessing has] many people staying there and damaging his home which is not the case."

Blessing discovered that Scott secretly video recorded their past sexual activity. Scott threatened "to use those [videos] in a public setting to embarrass [Blessing] as well as showing some of the videos [wherein Blessing is] clearly drugged out by [Scott] so [Scott] could take full advantage [of Blessing, which Blessing] was not aware of until recently."

Blessing feared for his well-being because Scott claimed to have the right to enter Blessing's home at any time and take any property therein. Further, Scott accused Blessing of stealing Scott's property, which Blessing believed would give Scott reason

to again steal from Blessing. Blessing was also fearful because Scott stored a firearm in his car and “proudly” discussed “his ambition and willingness to shoot someone.”

B. TRO

On March 15, 2017, the trial court issued a TRO protecting Blessing from Scott. The trial court scheduled a hearing for April 7 at 8:15 a.m. The proof of service of the TRO and notice of hearing reflected Scott was served on April 5 at 12:00 p.m. by Brendan P. Mullen. On April 7, the trial court continued the hearing to May 2 because the service on Scott was untimely.

C. DECLARATION AND CONTINUANCE

On May 1, Blessing filed a declaration. Blessing included a police report as an exhibit to the declaration. The police report reflects that on February 26, 2017, a residential burglary allegedly occurred at Blessing’s home. The suspect’s name was mostly redacted from the police report; however, one place in the report identified the suspect as Scott.

On May 1, Scott requested a continuance because Scott hired an attorney on April 27, and the attorney needed time to prepare. The trial court continued the matter until May 19.

D. RESPONSE

On May 18, Scott responded to Blessing’s request for a restraining order. Scott did not consent to the restraining order. Scott asserted he was an owner of the home in which Blessing resided (the home). Scott provided the grant deed recorded on February 28, 2017, as evidence of his ownership interest in the home. When Scott and Blessing

were in a relationship, Scott moved some of his property into the home. Scott went to the home on February 26 to retrieve his property.² Scott denied telling Blessing, “So help me God [Blessing] if you go forward with pressing charges on me, [then I] will see to it that [you] end[] up in jail or worse.” Scott asserted that all his sexual activity with Blessing was consensual. Scott does own a firearm; however, it is at the home in Palm Springs.

Scott alleged that Blessing personally served Scott with the TRO while Scott was at a gym. Blessing then remained at the gym taunting Scott. Scott requested a reciprocal restraining order with (1) permission to immediately enter the home to remove his property; and (2) permission to set up an alternating schedule for occupancy of the home, until the home can be sold.

E. REPLY

On May 19, Blessing requested a continuance. The trial court continued the matter to June 15 and gave Blessing until June 9 to file a reply to Scott’s response. Blessing filed his reply on June 9.

In the reply, Blessing expressed concern that Scott was using the joint ownership of the home as a reason to maintain contact with Blessing. Blessing explained that the grant deed, executed in November, was not intended to be recorded until Blessing and Scott married; however, Scott had the deed recorded on February 28. Blessing asserted

² Scott alleged he went to the home on April 26 to retrieve his property. We infer this date is an error, and he intended to declare that he went to the home on February 26 to retrieve his property, because the police report reflects the alleged burglary occurred on February 26.

he was suing Scott, in a separate case, for clouding title to the home, and that there was no reason for Blessing and Scott to have continued contact due to the home.

Blessing asserted Scott took \$30,000 of Blessing's property on February 26—not Scott's property. Further, Blessing asserted Scott stalked Blessing through video cameras that Scott hid in the home in February. Blessing explained that he continued to find cameras hidden throughout the home. Blessing asserted Scott's firearm was not in the home. Blessing asserted he feared Scott because Scott "is dangerous."

F. HEARING

On June 15, 2017, the trial court held a hearing on Blessing's request for a restraining order. Blessing explained that Scott continued to stalk him, through the hidden security cameras inside the home, in violation of the TRO. Further, Blessing asserted that to the extent Blessing consented to the sexual activity in Scott's video recordings, Blessing did not consent to the recordings being published. Blessing asserted that Scott was using the sexual recordings as bargaining items in their property dispute. Blessing asserted Scott's threats to publish the sexual recordings violated the TRO because they disturbed Blessing's peace.

Scott asserted Blessing was abusing the domestic violence restraining order process for the purpose of preventing Scott from entering the home that they jointly owned. Scott denied that there were surveillance cameras hidden in the home. The trial court expressed concern about Scott's failure to address Blessing's allegations that (1) Scott secretly recorded their sexual activity, and (2) Scott threatened to publish the recordings of their sexual activity. Scott asserted he denied Blessing's allegations in his

response, in which he wrote, “ ‘Mr. Blessing makes several other inflammatory statements about me personally and regarding our intimate relationship, all which I vehemently deny.’ ”

The trial court responded, “Blanket denials. . . . [Scott] never, ever says, ‘I did not secretly tape our relationship, and I did not threaten to disclose those tapes.’ He never says that.” The trial court explained, “I have an unanswered allegation that is sufficient to justify a domestic violence restraining order.” Scott asserted Blessing failed to provide the trial court with evidence to support his allegation. The trial court said, “If Mr. Blessing says it, that makes it evidence. Mr. Scott fails to deny it specifically. That means it is unrefuted evidence. [¶] The restraining order is granted.” The restraining order was ordered to expire on June 14, 2020.

DISCUSSION

A. SUBSTANTIAL EVIDENCE

Scott contends the trial court erred in issuing the restraining order because the court’s findings are not supported by substantial evidence.

We review the trial court’s factual findings under the substantial evidence standard. (*J.J. v. M.F.* (2014) 223 Cal.App.4th 968, 975.) “Under this standard, ‘our review begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, to support the findings below.’ [Citation.] ‘In assessing whether any substantial evidence exists, we view the record in the light most favorable to [Blessing], giving [him] the benefit of every reasonable inference and resolving all conflicts in [his] favor.’ [Citation.] ‘ “[I]t is not our role to reweigh the

evidence, redetermine the credibility of the witnesses, or resolve conflicts in the testimony, and we will not disturb the judgment if there is evidence to support it.” ’ ’ ”
(*Orange Catholic Foundation v. Arvizu* (2018) 28 Cal.App.5th 283, 292.)

A domestic violence restraining order may be issued upon “proof of a past act or acts of abuse.” (§ 6300.) The definition of “abuse” includes “any behavior that has been or could be enjoined pursuant to Section 6320.” (§ 6203, subd. (a)(4).) Section 6320 provides that a court may issue an “order enjoining a party from . . . stalking, threatening, . . . harassing, . . . or disturbing the peace of the other party.” (§ 6320, subd. (a).) “Disturbing the peace of the other party” means “destroy[ing] the mental or emotional calm of the other party.” (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497.) A trial court may issue a domestic violence restraining order “based solely on the affidavit or testimony of the person requesting the restraining order.” (§ 6300, subd. (a).)

On February 26, Scott entered Blessing’s home without permission, while Blessing was not present. Scott ripped “the Camera/front door systems off the front of [the] house.” On March 3, Scott said to Blessing, “So help me God [Blessing] if you go forward with pressing charges on me, [then I] will see to it that [you] end[] up in jail or worse.” On March 9, Scott told Blessing, “[You] should have [your] fucking head blown off and [I] know[] people.” “As of” March 14, Scott had sent Blessing “a series of [t]exts calling [Blessing] pretty much every name [Scott] could think of [Scott texted he] was going to take [Blessing] down if [Blessing] did not drop the charges on

[Scott.]” Blessing was fearful because Scott stored a firearm in his car and “proudly” discussed “his ambition and willingness to shoot someone.”

The foregoing evidence could reasonably be understood as Scott threatening to harm Blessing, in particular Scott’s statement “[You] should have [your] fucking head blown off.” Blessing was fearful because Scott owned a firearm and had spoken of a willingness to shoot a person. Scott’s removal of the front door security camera could reasonably be viewed as Scott trying to make Blessing more vulnerable, in that, if Scott came to the home to harm Blessing, there would not be security footage of such an event.

In sum, the record supports a finding that Scott threatened Blessing with physical harm, e.g., “[You] should have [your] fucking head blown off”; Scott had the means to carry out the threat because he owned a firearm; and Scott took a step toward making the threat easier to carry out by removing the front door security camera. Therefore, there is substantial evidence in the record of a past act of abuse supporting the issuance of the domestic violence restraining order. (§ 6320, subd. (a) [“threatening”].)

Scott contends there is not substantial evidence because Blessing’s statements constitute argument, not evidence. The facts analyzed *ante* were taken from Blessing’s statement in support of his request for a restraining order. Blessing signed the restraining order request under penalty of perjury. Blessing’s statement, which is attached to the request, was also made under penalty of perjury. Because Blessing’s statement was made under penalty of perjury, it constitutes a declaration. (Code Civ.

Proc., § 2015.5.) Accordingly, we are not persuaded that Blessing’s statement was argument rather than evidence.

Scott contends there is not substantial evidence because there are no exhibits attached to Blessing’s declaration. “ ‘A single witness’s testimony may constitute substantial evidence to support a finding. [Citation.] It is not our role as a reviewing court to reweigh the evidence or to assess witness credibility.’ ” (*Powell v. Tagami* (2018) 26 Cal.App.5th 219, 231.) Blessing’s statement was sufficient to constitute substantial evidence—exhibits were not required. Accordingly, we are not persuaded that a lack of exhibits equates to a lack of substantial evidence.

B. BLESSING’S REPLY

Scott contends Blessing improperly provided new evidence in his trial court reply, which deprived Scott of the ability to respond to the new evidence.

We examine whether the trial court abused its discretion by admitting evidence submitted with Blessing’s reply. (*Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1299, 1307-1308.) “A ruling will be deemed an abuse of discretion only if it is ‘ “so irrational or arbitrary that no reasonable person could agree with it.” ’ ” (*Olive v. General Nutrition Centers, Inc.* (2018) 30 Cal.App.5th 804, 817.)

“The general rule of motion practice . . . is that new evidence is not permitted with reply papers. . . . ‘[T]he inclusion of additional evidentiary matter with the reply should only be allowed in the exceptional case . . . ’ and if permitted, the other party should be given the opportunity to respond.” (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538.)

The trial court was required to hold a hearing on Blessing's request for a restraining order. (§§ 242, subd. (a), 6340, subd. (a); *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 335.) At the hearing, Scott addressed the evidence presented in Blessing's reply. Thus, Scott had the opportunity to respond to Blessing's evidence. Because Scott had an opportunity to respond to the evidence, we conclude the trial court did not abuse its discretion by admitting the evidence.

Scott contends he was not given an opportunity to respond to the evidence provided in Blessing's reply because, during the hearing, Scott asked the court, "May I speak?" and the Court responded, "Nope, not yet." Scott's argument is not persuasive because that exchange with the trial court occurred after Scott discussed Blessing's evidence. In sum, Scott was given an opportunity to respond to Blessing's evidence. Therefore, an abuse of discretion has not been demonstrated.

C. SERVICE OF PROCESS

Scott contends the order should be reversed because Blessing personally served Scott with the TRO and notice of hearing.

Code of Civil Procedure section 414.10 governs service of process under the Domestic Violence Prevention Act (Fam. Code, § 6200). (*Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863-864.) "A summons may be served by any person who is at least 18 years of age and not a party to the action." (Code Civ. Proc., § 414.10.) "Proper service is a requirement for a court's exercise of personal jurisdiction. [Citation.] An order entered without personal jurisdiction over the defendant is void." (*Caldwell*, at p. 863.)

Scott’s contention concerning improper service of process was not “preserved for review by a timely motion to quash service prior to making a general appearance.

[Citations.] Failure to make a motion to quash constitutes a waiver of the issues of lack of personal jurisdiction, inadequacy of process, [and] inadequacy of service of process.” (*City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 680.) “[F]ailure to make a proper challenge to jurisdiction in the trial court (as by a motion to quash service prior to any general appearance) forfeits any such challenge on appeal.” (*Id.* at p. 681.)

Scott did not move to quash service in the trial court, and he made a general appearance in the trial court (Code Civ. Proc., § 410.50, subd. (a)); therefore, this issue has been forfeited. Nevertheless, we will address the issue because it is easily resolved. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 887, fn. 7 [appellate court has discretion to address a forfeited claim]; see also *People v. Williams* (1998) 17 Cal.4th 148, 161, fn. 6 [same].)

We apply the substantial evidence standard of review. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 535; *Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 774.) The proof of service for the TRO and notice of hearing reflects the document was served by Brendan Mullen. Therefore, there is substantial evidence supporting a finding that Mullen—not Blessing—served Scott.

Scott contends he provided evidence reflecting Blessing served Scott. Under the substantial evidence standard, we resolve any conflicts in the evidence in favor of Blessing. (*Sonora Diamond Corp. v. Superior Court, supra*, 83 Cal.App.4th at p. 535.)

Accordingly, we are not persuaded by Scott's assertion that he provided evidence contradicting the proof of service.

D. BREADTH OF THE ORDER

In Scott's appellant's reply brief, he asserts the restraining order is overly broad. We do not address the merits of this contention because it is raised for the first time in the reply brief. (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1295.)

DISPOSITION

The order is affirmed. Blessing is awarded his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

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MILLER
Acting P. J.

We concur:

FIELDS
J.

MENETREZ
J.